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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Misc. No.4897-CII of 2006 and
C.E.A. No. 56 of 2006

Date of decision: 6.2.2007

Commissioner of Central Excise Commissionerate, Jalandhar (Hqrs. at Chandigarh) ...Appellant

Versus

M/s Hamco Industries Pvt. Ltd., G.T.Road, Maqsudan, Jalandhar

...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mrs.Daya Chaudhary, Advocate for the appellant.
Mr.Sudhir Malhotra, Advocate for the respondent.

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RAJESH BINDAL, J.

Civil Misc. No.4897-CII of 2006

For the reasons stated in the application, the delay of 310 days in refiling the appeal is condoned.

The Civil Misc. Application is allowed.

C.E.A. No.56 of 2006

The Revenue has filed the present appeal under Section 35 G of the Central Excise Act, 1944 (for short 'the Act') claiming that substantial questions of law would emerge out of order dated 3.8.2004 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short 'the Tribunal) in appeal No.E/1988/2004-NB (SM). The following questions have been framed by the revenue:-

"i) Whether matter regarding determining of Annual Capacity of Production (ACP) duly determined by an appealable

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order of Commissioner of Central Excise, but which was not challenged in appeal and had attained finality, could be re-opened in a subsequent proceedings for refund disputing the said Order of the Commissioner on the basis of a letter/representation filed five months after the order was passed by the Commissioner, which contains same objections which the Commissioner has already considered/ discussed in his order itself?

ii) Whether under the facts and circumstances of the case, the Tribunal has erred in law by setting aside the order-in-appeal No.4/CE/Appl/Jal/2004 dated 28.1.2004 of Commissioner (Appeals) remanding back the case to the Adjudicating Authority with the directions for deciding the refund claim of the party after awaiting the order of the Commissioner on representation made by them against the order of determination of Annual Capacity of Production (ACP), when it is evident that Commissioner has no authority in law, to review his own order?"

Briefly the facts of the case are that the assessee, who is engaged in the business of hot steel re-rolling, moved an application for refund of Rs. 5,94,975/- vide application dated November 7, 2000 on account of excess payment of excise duty under Compounded Levy Scheme. The claim was rejected by the Deputy Commissioner, Central Excise vide order dated 29.5.02, which was upheld in appeal by the Commissioner (Appeals). This was an appeal by the respondent against the order rejecting the claim for refund of the excise duty paid and no relief was found admissible to the respondent in the order impugned However, the Tribunal vide its order dated August 03, 2004 referred the matter back to adjudicating authority for re-examination.

Learned counsel for the Revenue submitted that the respondent having not challenged the order of determination of capacity, was not entitled to seek relief with reference thereto in the proceedings for refund of the excess amount on account of excise duty paid. The exercise of

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powers under the circumstances by the Tribunal was not in conformity with the Act. On the other hand, learned counsel for the assessee submitted that the capacity of the respondent-mill was originally determined vide order dated November 17, 1997, however, with the change in various factors relevant for determination of capacity, the same was re-determined. It is further submitted that the Tribunal has merely remitted the matter back to the adjudicating authority and infact no relief whatsoever has been granted by the Tribunal to the respondent. He submitted that no question of law, much less a substantial question of law would emerge out of the order passed by the Tribunal as nothing has been determined finally.

We find merit in the contention raised by the learned counsel for the respondent, as the Tribunal has merely remitted the matter back to the Adjudicating Authority for deciding the case afresh. The Tribunal has not adjudicated upon any legal issue which warrant admission of appeal. We find that no question would emerge for our determination.

Accordingly, the appeal is dismissed.

(Rajesh Bindal)
Judge

February 06 ,2007 **(M.M.Kumar)**
Pka **Judge**